

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ROGER CANTU, et al.,  
Plaintiffs,  
v.  
KINGS COUNTY, et al.,  
Defendants.

Case No. 1:20-cv-00538-NONE-SAB  
ORDER STRIKING FIRST AMENDED  
COMPLAINT  
(ECF No. 20)

On May 22, 2020, Kings County, David Robinson, Kings County Sheriff, Kings County Sheriff Department (hereafter “County Defendants”) filed a motion to dismiss. (ECF No. 6.) On June 10, 2020, Defendant NaphCare filed a motion to dismiss. (ECF No. 10.) On January 26, 2021, both motions to dismiss were referred to the undersigned. (ECF No. 15.) On March 8, 2021, findings and recommendations issued recommending granting in part and denying in part County Defendants motion to dismiss and granting Defendant NaphCare’s motion to dismiss. (ECF No. 19.) On March 25, 2021, Plaintiffs filed a first amended complaint. (ECF No. 20.)

Amendment of the complaint is governed by Rule 15 of the Federal Rules of Civil Procedure which provides that a party may amend the party’s pleading once as a matter of course within twenty-one days of serving it or within twenty-one days after a motion to dismiss has been filed. Fed. R. Civ. P. 15(a)(1). Otherwise, a party may amend only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so requires.

1 Fed. R. Civ. P. 15(a)(2).

2 In this action, the defendants filed a motion to dismiss on May 22, 2020 and June 10,  
3 2020. A plaintiff may amend his complaint once as a matter of course under 15(a)(1), so long as  
4 he files it timely. Ramirez v. Cty. of San Bernardino, 806 F.3d 1002, 1007 (9th Cir. 2015).  
5 “Since 2009, a plaintiff has the right to amend within twenty-one days of service of the  
6 complaint (15(a)(1)(A)), or within twenty-one days of service of a responsive pleading or service  
7 of a motion under Rule 12(b), (e), or (f), whichever comes first (15(a)(1)(B)). Ramirez, 806 F.3d  
8 at 1007.

9 Here, Plaintiffs were required to file their amended complaint within twenty-one days of  
10 the filing of the motion to dismiss pursuant to Rule 15(a). Plaintiffs did not do so, therefore,  
11 Plaintiffs must either get the written consent of the opposing party or seek leave from the Court  
12 to file a first amended complaint. Fed. R. Civ. P. 15(a)(2). A findings and recommendations is  
13 currently before the district judge recommending granting leave to file an amended complaint,  
14 but no order has been filed granting leave to amend. Plaintiff did not file a written stipulation to  
15 amend nor was leave sought from the Court to file a first amended complaint.

16 Accordingly, IT IS HEREBY ORDERED that Plaintiffs’ first amended complaint (ECF  
17 No. 20) is STRICKEN FROM THE RECORD.

18  
19 IT IS SO ORDERED.

20 Dated: March 26, 2021

  
UNITED STATES MAGISTRATE JUDGE